

REMARKS

Claims 1-32 and 34-42 are pending in this application, with claim 28 being withdrawn from further consideration. By this Amendment, claims 1 and 37 are amended and previously canceled claim 33 is reintroduced in amended form as new claim 42. No new matter is added.

I. Pending Claims 1-32 and 34-41 Define Patentable Subject Matter

The Office Action rejects claims 1-6, 10-18, 20, 23, 25-27, 30, 34 and 37-41 under 35 U.S.C. §102(b) over German Patent No. DE 296 14 364 to Stange. This rejection is respectfully traversed.

Independent claim 1 recites, *inter alia*, an applicator comprising "a base portion . . . configured for fixing onto a receptacle" and "a handle portion rotatably mounted on the base portion to turn about a fixed axis of rotation, the handle portion having a longitudinal axis, wherein the axis of rotation and the longitudinal axis of the handle portion are never mutually perpendicular."

Stange's base is not "configured for" fixing onto a receptacle. Instead, Stange is directed to a standalone brush with a base that is not intended to be fixed. This prior argument is not addressed in the new rejection. Instead, the Office Action, on page 2, merely refers to Figs. 1-2. However, nothing illustrated shows a configuration that could "fix" the base to a receptacle. Because Stange fails to teach each and every feature of independent claim 1, this claim and claims dependent therefrom are not anticipated by Stange.

Independent claim 34 recites, *inter alia*, an applicator comprising "a handle rotatably mounted on the base portion to turn about a fixed axis of rotation (R), the handle portion having a longitudinal axis (L). . . wherein an angle (β) between the axis of the base portion (B) and the axis of the handle portion (L) is always strictly inferior to 90° when the handle portion is rotated about the axis of rotation."

Applicant respectfully submits that Stange fails to disclose or suggest these claimed features. In particular, it is clear from Fig. 3 of Stange that during rotation the angle (β) become perpendicular (i.e., more than inferior to 90°).

With respect to method claim 37, the Office Action fails to make a prima facie case of anticipation because it fails to identify a teaching of the method step of modifying a direction of the base between two different application modes. Instead, Stange provides a brush that is mobile relative to the handle so as to enable drying of the brush without soap or water remaining trapped within the bristles.

Therefore, Applicant respectfully submits that independent claims 1, 34, and 37 and claims dependent therefrom are patentable over Stange. Accordingly, withdrawal of the rejection over Stange is respectfully requested.

The Office Action also rejects claims 1-5, 7,-18, 20, 23, 25-27, 30-32, and 34-41 under 35 U.S.C. §103(a) over U.S. Patent No. 6,237,609 to Vasas in view of Stange. This rejection is respectfully traversed.

Vasas discloses a mascara brush and has no teaching or motivation to configure the stem or cap to render the stem or cap mobile in relation to the remainder of the device.

As discussed above, Stange is not "configured for" fixing onto a receptacle. Moreover, Stange is designed to rotate to a perpendicular position shown in Fig. 3 and fails to teach two application modes.

One of ordinary skill in the art would not have been motivated to combine Stange and Vagas. Stange discloses a brush having a tuft of bristles that is mobile relative to the handle so as to enable drying of the device without water or soap remaining trapped within the bristles. Such a problem is not faced by Vasas. Moreover, even if combined, the combination does not teach each and every feature of independent claims 1, 34, or 37.

Independent claims 1, 34, and 37 and claims dependent therefrom thus patentably distinguish over Vasas and Stange. Withdrawal of the rejection is respectfully requested.

The Office Action also rejects claims 7-9, 31, 32, and 35 under 35 U.S.C. §103(a) over Stange in view of U.S. Patent No. 3,97028 to Shay. This rejection is respectfully traversed.

Shay fails to overcome the deficiencies of Stange with respect to independent claim 1. Accordingly, claims 7-9, 31, 32, and 35 are allowable for their dependence on allowable base claim 1 and for the additional features recited therein. Withdrawal of the rejection is respectfully requested.

The Office Action also rejects claim 19 under 35 U.S.C. §103(a) over Stange in view of U.S. Patent No. 5,815,875 to Yamada. This rejection is respectfully traversed.

Yamada fails to overcome the deficiencies of Stange with respect to independent claim 1. Accordingly, claim 19 is allowable for its dependence on allowable base claim 1 and for the additional features recited therein. Withdrawal of the rejection is respectfully requested.

The Office Action also rejects claim 21 under 35 U.S.C. §103(a) over Stange. This rejection is respectfully traversed.

Stange is discussed above and fails to teach each and every feature of independent claim 1. Accordingly, claim 21 is allowable for its dependence on allowable base claim 1 and for the additional features recited therein. Withdrawal of the rejection is respectfully requested.

The Office Action also rejects claim 22 under 35 U.S.C. §103(a) over Stange in view of U.S. Patent No. 4,922,575 to Riemann. This rejection is respectfully traversed.

Riemann fails to overcome the deficiencies of Stange with respect to independent claim 1. Accordingly, claim 22 is allowable for its dependence on allowable base claim 1 and

for the additional features recited therein. Withdrawal of the rejection is respectfully requested.

The Office Action also rejects claim 24 under 35 U.S.C. §103(a) over Stange in view of U.S. Patent No. 5,137,038 to Kingsford. This rejection is respectfully traversed.

Kingsford fails to overcome the deficiencies of Stange with respect to independent claim 1. Accordingly, claim 24 is allowable for its dependence on allowable base claim 1 and for the additional features recited therein. Withdrawal of the rejection is respectfully requested.

The Office Action also rejects claim 29 under 35 U.S.C. §103(a) over Stange in view of U.S. Patent No. 3,164,856 to Samaras et al. (Samaras). This rejection is respectfully traversed.

Samaras fails to overcome the deficiencies of Stange with respect to independent claim 1. Accordingly, claim 29 is allowable for its dependence on allowable base claim 1 and for the additional features recited therein. Withdrawal of the rejection is respectfully requested.

II. Rejoinder of Withdrawn Claim 28 is Requested

Claim 28 remains withdrawn from representation. However, rejoinder of claim 28 is respectfully requested in view of the allowability of claim 1 from which it depends.

III. New Claim 42 Defines Patentable Subject Matter


New claim 42 substantially corresponds to previously canceled independent claim 33 in amended form, and includes a handle portion rotatably mounted on a base portion with specific axes of rotation, and an applicator element configured for applying the product to one of "lips, eyelids, and eyelashes." Stange is not configured for such uses. Vasas also does not include a rotatably mounted handle. The remaining applied references fail to overcome these deficiencies. Accordingly, claim 42 patentably distinguishes over the applied art.

IV. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-32 and 34-42 are thus earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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